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September 22, 2016

VIA EMAIL AND REGULAR MAIL

Karen Hacker, M.D., M.P.H. Director
Allegheny County Health Department
542 Fourth Ave.
Pittsburgh PA 15219

**Re: Request for Stay
Progress Street Partners LTD
Heinz Loft Apartments**

Dear Dr. Hacker:

This letter is in response to Mr. Parker's objections to Progress Street Partners LTD's ("Progress St.") pending request for stay. Progress St. again respectfully requests that you grant the stay until the appeal is determined.

The Housing and Community Environment Program's position seems to be well-intentioned but misguided and unreasonable. To put this in the proper perspective, the "pool" at issue is not a swimming pool – it is a 98 square feet lap pool that is *less than 4 feet deep* ("Swim Spa").

Mr. Parker makes much and more about what he perceives to be Progress St.'s failure to allege why Progress St. is unable to retain a lifeguard in order to operate the Swim Spa. However, this ignores the following allegations provided for in the underlying appeal:

- On September 29, 2004, the Department issued an adjudication approving a variance to Section 912 of Article IX, to operate the Swim Spa without a lifeguard.
- Progress St. sought the Departments' approval that a lifeguard was not required for the small and shallow Swim Spa prior to construction because it would not have constructed the Spa otherwise.
- Progress St. made a significant financial expenditure to build the Swim Spa based solely on the Department's determination that a lifeguard was not required.

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- If a lifeguard is required, Progress St. will not be able to operate the Swim Spa for its residents.

Progress St. reasonably believed the last allegation would not require further explanation because the reason why should be self-evident – it is not economically viable for Progress St. to hire a lifeguard to be on duty where:

- The Swim Spa is shallow – it is less than 4 feet deep.
- There are currently 342 residents at Heinz Lofts.
- The use of the Swim Spa is limited to Heinz Lofts residents who are at least 14 years of age.
- There are no residents who are at least 14 years of age who are less than 4 feet in height.
- There is a key entry system to access the fitness area and Swim Spa.
- The residents are required to sign a liability waiver in order to use the Swim Spa.
- There are three signs posted around the Swim Spa that state: “Shallow Water No Diving Allowed.”
- The Swim Spa has been used and operated without a lifeguard 24 hours a day 7 days a week for the past 12 years without incident.

To the extent deemed necessary, Progress St. can provide a sworn affidavit that provides that in the absence of the stay the Swim Spa will be closed. The denial of the stay would only serve to deprive Heinz Lofts’ residents with the ability to actually improve their health.

However, the most important reason why the stay should be granted is that to hold otherwise could deprive Progress St. of its right to due process of law. Progress St. has timely appealed the merits of the determination. The Department is required to schedule a hearing in a reasonable amount of time. Progress St. should not be penalized during the time it takes the Department to retain a hearing officer and schedule a hearing.

Progress St. believes that its request for a stay between now and until the appeal is finally resolved is reasonable as it is only asking to maintain the status quo that has been in place for the past 12 years.

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Your consideration is greatly appreciated.

Very truly yours,



Shawn N. Gallagher

SNG/

cc: All Via Email
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